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COMMISSION ON HUMAN RIGHTS
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Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Joint written statement submitted by the American Association of Jurists, the Andean Commission of Jurists, the International Commission of Jurists, the International Indian Treaty Council, the International League for the Rights and Liberation of Peoples, the Latin American Federation of Associations of Relatives of Disappeared Detainees, Service Peace and Justice in Latin America and Women's International League for Peace and Freedom, non-governmental organizations in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 August 1994]

GE.94-13622 (E)

Designation of a special rapporteur for Colombia

1. The case of Colombia has been a subject of concern of the United Nations human rights system for almost a decade, and more consistently since 1988. During 1994, as a result of the evidence collected by the special rapporteurs and the thematic working groups, and the growing concern of the international community with the human rights situation in Colombia, the Representative of the Secretary-General for internally displaced persons, Francis Deng, visited the country. Before the end of the present year, the second visit in situ of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Brace Waly Ndiaye, is expected; its objective is to evaluate the compliance with the recommendations formulated in the Special Rapporteur's first report.

2. Nevertheless, the non-governmental organizations (NGOs) submitting the present document believe that the action of United Nations bodies and, in particular, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, has been insufficient and, above all, inefficient for purposes of confronting the severe human rights crisis which Colombia is experiencing.

3. In effect, the severe human rights crisis which has affected Colombia for several years is reflected in the recurrence of certain phenomena which underline the precariousness of the basic guarantees which under the rule of law a State owes its nationals:

(a) **High levels of violation of the right to life, with an average of more than 10 victims a day since 1988, broken down as follows**: six people assassinated daily for being activists in political, social or human rights movements; one person assassinated every other day as a suspected delinquent due to his or her marginal status (sexual workers, beggars, street children); one detained person disappeared every two days; and more than three persons killed a day in military actions as a result of the conflict. Between January and March of 1994, the sector most affected by the political violence was that of rural workers, (campesinos) (221 victims), followed by those of the business sector (133) and other workers (106). A significant group of victims is that of persons who belong to some labour-related organization (33 labour union victims) or to a political party (78 victims, of whom 26 belonged to the Patriotic Union (Unión Patriótica). One particular case of political violence is that exercised against the indigenous population. Sixteen indigenous leaders have been assassinated between January and March of 1994;

(b) **The overwhelming participation of State agents in the political violence**: 72 per cent of the cases for all of 1993 where the responsible party was identified, not including deaths in combat, are attributable to State agents and paramilitary groups (54.26 per cent and 17.91 per cent, respectively), while close to 27 per cent of these cases correspond to the guerrillas. These figures show that, contrary to the widespread version of the facts which attributes responsibility for the political violence to non-State actors such as drug traffickers and private armed groups, the Colombian State is the principal party responsible for the attempts made against the right to life for political or presumably political reasons;

(c) **The problem of impunity for persons responsible for human rights violations, which in itself constitutes a serious violation of human rights, in particular the right to justice**: according to figures revealed in April 1994 by the National Department for Planification (Departamento Nacional de Planeación), a government body, the probability that a crime will not culminate in a judicial determination of culpability is 97 per cent in Colombia. Impunity as regards human rights violations is even greater still, and is furthermore manifest in numerous mechanisms, legal and otherwise, which perpetuate it, such as the absence of the State's political will to combat it. Among these cases one stands out: the assassination of five parliamentary members of the Patriotic Union, whose cases in the courts are paralysed. The absolute impunity is documented, moreover, in the recent resolutions of the Human Rights Committee of the parliamentary members of the Inter-Parliamentary Union (resolution adopted without a vote by the Inter-Parliamentary Council at its one hundred and fifty-fourth session, 26 March 1994);

(d) **The absence of political will on the part of the Colombian Government to overcome the human rights crisis**: damning evidence of this lack of will was the executive veto of the law proscribing the forced disappearance of persons as a crime, approved by the Congress on 7 and 8 June 1994, on the grounds that in Colombia this crime can be justified by members of the armed forces and the police under the principle of due obedience, and because they can only be tried criminally by military tribunals; both of these justifications are in direct contravention of the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance (General Assembly resolution 47/133) and the American Convention on the same subject;

(e) **The utilization of other methods of violating human rights such as torture and arbitrary detentions**: currently, there is a tendency to combine these two methods. Torture is a systematic practice employed in various situations, including that in which it is used before carrying out an extrajudicial execution. So much so that the Special Rapporteur on torture expressed his consternation in his annual report to the Commission (E/CN.4/1994/31, para. 188), noting that "the Special Rapporteur looks forward to learning information from the [Colombian] Government what measures it proposes to take to bring under control this problem [of torture] which seems to be endemic, especially in zones of conflict". In this regard, it is important to mention the recent decision of the Working Group on Arbitrary Detention (decision 58/1993) in the case of Orlando Quintero Paéz which was presented for its review. The cited decision states that the detention of Orlando Quintero Paéz is declared arbitrary, for being in contravention of article 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights;

(f) **The permanent reliance on the state of emergency in order to govern modifies, moreover, the administration of justice and introduces elements which affect the guarantees of persons within the judicial process**: on 1 May 1994, the third state of "internal turmoil" (conmoción interior) since the Constitution of 1991 entered into effect was decreed. This declaration constitutes, as affirmed by the recent decision of the Constitutional Court, an arbitrary use of the state of emergency powers since it does not respond to the really exceptional conditions which the Constitution demands for its

adoption; moreover, it violates the right of personal liberty, the presumption of innocence, the right to be tried within a reasonable period of time or be freed, and the principle according to which provisional detention should not be the rule but rather the exception;

(g) **The repeated non-compliance with the recommendations and decisions formulated by international organizations responsible for the protection of human rights**: the Government continues not to apply the recommendations formulated by the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on extrajudicial, summary or arbitrary executions after their visits in situ to Colombia (1988 and 1989, respectively), or those formulated by the report on the evaluation of advisory services rendered by the Centre for Human Rights to the Colombian Government from 1988 until 1992. Many of these recommendations overlap and refer, inter alia, to retiring from service the State agents notoriously implicated in human rights violations, to not restricting human rights or judicial guarantees during states of emergency, to protecting the defenders of human rights, to correcting the practice of trying human rights violations in military tribunals, and to strengthening the administration of justice. The Colombian Government also ignores the 10 decisions adopted by the Inter-American Commission on Human Rights between 1987 and 1994 in cases of human rights violations, and does not recognize them as binding; for precisely this reason the Colombian State in 1992 was taken to the Inter-American Court of Human Rights in light of its notorious non-compliance with the recommendations of the Commission in the case of the forced disappearances of educators Isidro Caballero and María del Carmen Santana.

4. On 7 August, a new administration took power, headed by the Liberal Party's Ernesto Samper Pizano. His statements during the electoral campaign were not strong enough in support of the defence and promotion of human rights in Colombia, nor were they decidedly favourable to a negotiated solution to the armed conflict in Colombia.

5. We believe that efficient and decisive action by the international community can influence positively those sectors of the new Government favourable to a policy of defending and promoting human rights. The recent international campaign by Amnesty International has brought to the fore that the Colombian Government and society are sensitive to international pressures, and that when subject to such pressures they can adopt measures which guarantee the enjoyment of human rights and fundamental liberties.

6. In light of all the above, the NGOs submitting the present statement consider that in Colombia there exists a pattern of serious and persistent violations of human rights which requires the immediate attention of the international community in order to be overcome. This attention should be expressed by designating a mechanism of international supervision in order to assure, among other points, the immediate compliance with the recommendations communicated to the Colombian State by regional and international human rights organizations.

7. We call upon the distinguished expert members of the Sub-Commission to promote and support the presentation of a resolution on the Colombian case which would:

(a) Invite the Commission on Human Rights to consider the Colombian situation under item 12 of its agenda, "Question of the violation of human rights and fundamental freedoms in any part of the world ..." during its fifty-first session and to appoint as a special rapporteur a person of international renown and prestige in the field of human rights who displays an understanding of the situation in Colombia, and whose mandate would be to carry out a comprehensive study of the human rights situation in the country and to present his or her findings to the Commission on Human Rights at its fifty-second session;

(b) Likewise invite the Commission on Human Rights to assign to the Special Rapporteur the additional mandate of collaborating with the authorities and the people of Colombia in looking for ways to overcome the grave human rights crisis, especially in the following areas:

(i) The suppression of the normative measures that favour impunity for human rights offenders, as well as aiding in the implementation of mechanisms that permit establishing the truth in order to ensure that justice is done;

(ii) The legislative development of the 1991 Constitution, emphasizing the need to ensure compliance with international human rights standards and international humanitarian law,

(iii) The necessity to eradicate the existence and actions of paramilitary groups, accounting for the recommendations which the Special Rapporteur on extrajudicial, summary or arbitrary executions has made to the Government in order to retire from active service those members of the armed forces and police associated with paramilitary groups and involved in gross human rights violations, notwithstanding the respective judicial investigation;

(iv) The search for a solution to the internal armed conflict, encouraging the parties to negotiate an agreement, to respect human rights and to apply international humanitarian law;

(v) Developing policies to guarantee full protection of the internally displaced and a safe return to their homes, as well as ensuring respect for the humanitarian work with displaced people carried out by non-governmental organizations;

(vi) The administration of justice, seeking to guarantee an independent and impartial judiciary which combines efficiency with due respect for the liberties and rights of persons; and,

(vii) The due application of the recommendations made by the experts and evaluation missions of the United Nations and by other international bodies.